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FAA > NLRA & FLSA: Class Action Waivers in Employee Arbitration Agreements are Enforceable

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In a recent ruling, a closely divided Supreme Court held that employment arbitration agreements must be enforced pursuant to their terms, resolving a circuit split in favor of employers and consistent with the federal policy in favor of arbitration. In so doing, the Court reversed an Obama-era National Labor Relations Board (NLRB) ruling – and disapproved of lower courts that had followed it – that an employee’s right to engage in concerted activities and sue on behalf of themselves and “other employees similarly situated” effectively nullified employment arbitration

agreements that barred class actions. The Court ruled that employment arbitration agreements can prohibit aggrieved employees from banding together under certain circumstances.

A brief discussion of the involved statutes is necessary to appreciate the Court's rationale and the significance of this ruling. In 1925, Congress enacted the Federal Arbitration Act (FAA), which codified a liberal federal policy favoring arbitration and commanded that an agreement to arbitrate a dispute "shall be valid, irrevocable, and enforceable." In so doing, Congress placed arbitration agreements on equal footing as any other contract. Ten years later, Congress enacted the National Labor Relations Act (NLRA), which codified the right of employees to engage in concerted activities for "mutual aid and protection." Moreover, the Fair Labor Standards Act (FLSA) codifies the right of an employee to sue for wages on behalf of "themselves and other employees similarly situated" and pursue a "collective action." The combined effect of these workplace statutes provided employees with a federally protected ability to band together in class actions to enforce workplace standards.

In *Epic Systems v. Lewis*, the Court considered whether an arbitration agreement that prohibited employees from engaging in a concerted activity by joining a class action was valid. One of the plaintiffs was a junior accountant who, like many of his colleagues, had entered into an employment agreement providing that he would arbitrate any workplace disputes. The agreement also specified that claims pertaining to different employees were "[to] be heard in separate proceedings."

After his employment ended, the plaintiff sued the employer in federal court, claiming that his position was misclassified as exempt from payment of overtime. He cited the FLSA collective action provision and sought to recover the allegedly owed overtime pay on behalf of himself and a nationwide class of plaintiffs.

The employer moved to compel individual arbitration, citing the arbitration agreement contained in the plaintiff's employment paperwork. The intermediate federal appeals court concluded that the FAA's "savings clause," a provision that nullifies an otherwise enforceable arbitration agreement that violates federal law, prevented enforcement of the arbitration agreement because it effectively prohibited the employee from engaging in the type of concerted activity the NLRA protects.

The case made it to the Supreme Court. In an opinion penned by the Court's newest Justice, the majority sided with the employer by relying upon the mandates of the FAA that arbitration agreements are to be enforced according to their terms - "including terms providing for individualized proceedings." Recognizing that nothing in the NLRA trumps the FAA, the Court held that the statute's silence regarding the effect of arbitration agreements does not displace the FAA's plain language or the federal policy in favor of arbitration pursuant to a valid agreement.

This ruling has a significant impact on employment agreements between employees and their employers. In many situations, violations of overtime rules are comparatively minor and are handled on an individual basis. For this reason, employees frequently band together as a class, as they are entitled to under the FLSA, to enforce these rights on "behalf of themselves and other employees similarly situated." This has the effect of collecting the sum of the "owed" wages in one pot and makes the case attractive for plaintiff lawyers. This ruling recognizes the ability of employers to isolate each employee and prevent individualized wages from being included in that pot.

While the effect of the employer-friendly ruling may seem obvious at first blush, careful employers understand that arbitration is not right for every employee and prudent attorneys representing employers must understand the importance of crafting valid and enforceable arbitration agreements.

For more information regarding Employee Arbitration Agreements, contact Rick Hackman, Esq. or Ron Pollock, Esq. Rick or Ron would be happy to discuss with you the pros and cons of including arbitration provisions in employment agreements and to assist you in fashioning an enforceable agreement.

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